

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	May 2, 2017
Time of Incident:	Approximately 5:30 a.m.
Location of Incident:	Fast Food Restaurant, XXX N. St. Clair St. Chicago, IL
Date of IPRA Notification:	May 2, 2017
Time of IPRA Notification:	Approximately 12:00 p.m.

On May 2, 2017, the Office of Emergency Management and Communications (“OEMC”) received a 911 call from a Fast Food Restaurant employee requesting police assistance in removing people from the lobby who refused to leave.² Officers A and B responded, and in doing so, interacted with three African-American males, including the complainant Subject 1. After Officers A and B left the Fast Food Restaurant, an ambulance transported Subject 1 to Northwestern Memorial Hospital where Sergeant A interviewed Subject 1 and then initiated Log #1085055 based on Subject 1’s allegation that while in the Fast Food Restaurant he “had been sleeping and was slammed to the ground by officers.” Following the interview Subject 1 was arrested for the battery of Officer A.

COPA reviewed and investigated Subject 1’s allegation of excessive force and determined it to be unfounded. As such, COPA did not make the allegation against Officer A. However, COPA served allegations to Officer A based upon additional statements made by Subject 1 in his sworn complaint and upon review of Officer A’s body-worn camera (“BWC”) footage. Detailed forthwith, COPA reached findings of exonerated and sustained.³

II. INVOLVED PARTIES

Accused Officer #1:	Officer A, star #XXXXXX, employee #XXXXXX, Date of Appointment to Chicago Police Department (“CPD”): XX/XX 2013, Police Officer, Unit 018, Date of Birth: XX/XX 1982, Male, Hispanic ⁴
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¹ On September 15, 2017, the Civilian Office of Police Accountability (“COPA”) replaced IPRA as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

² CPD’s investigation revealed Civilian 1 called 911. In her 911 call, she specifies that there are “like four” people that need to be removed. In dispatching the call, OEMC provided the description of a “disturbance at Fast Food Restaurant” and “Civilian 1 said four loiterers refusing to leave in the lobby.” (See Attachment 19).

³ See Attachment 4.

⁴ Race obtained from Alpha/Star Query search of CPD’s CLEAR Data Warehouse database. (See Attachment 60).

Witness Officer #1:	Officer B, star #XXXXXX, employee #XXXXXX, Date of Appointment to CPD: XX/XX 2016, Police Officer, Unit 007, Date of Birth: XX/XX 1988, Male, White ⁵
Subject #1:	Subject 1, Male, African-American, Date of Birth: XX/XX 1977
Subject #s 2-3:	Two unidentified Males, African-American

III. ALLEGATIONS

Officer	Allegation	Finding
Officer A	1. Failed to seek medical attention for Subject 1 despite his verbal request, in violation of Rule 5	Exonerated
	2. Pushed two unidentified males outside the Fast Food Restaurant, in violation of Rule 8 and 9	Sustained
	3. Directed profanity at the same unidentified two males, in violation of Rule 8 and 9	Sustained

IV. APPLICABLE RULES AND LAWS

CPD Rules and Regulations

1. **Rule 2:** Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
2. **Rule 5:** Failure to perform any duty.
3. **Rule 8:** Disrespect to or maltreatment of any person, while on duty or off duty.
4. **Rule 9:** Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

General Orders

1. G03-02: Use of Force Guidelines, effective date: October 1, 2002⁶
2. G03-02-02: Force Options, effective date: January 1, 2016⁷

⁵ After notifying Officer B for a witness statement, COPA, upon further review, determined that the BWC footage satisfied any questions that were to be posed to him at the time. As such, COPA cancelled the interview.

⁶ See Attachment 50.

⁷ See Attachment 58.

3. G04-01: Preliminary Investigations, effective date: October 13, 2015⁸

V. INVESTIGATION

COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in COPA's analysis.

a. Interviews

i. Subject 1

IPRA interviewed Subject 1 on May 2, 2017.⁹ In summary, Subject 1 stated that on that morning, he and three other guys had been sleeping in the Fast Food Restaurant located at XXX N. St. Clair St. Per Subject 1, he is always there sleeping for a few hours as he is homeless. Subject 1 stated that while in a deep sleep at a table, he awoke to being slammed on the ground, which was when he first realized officers were there in the Fast Food Restaurant. Subject 1 said his foot, specifically his toe, hit the ground hard followed by his right knee, and that he awoke as a result of his foot hitting the ground hard. He clarified that he did not fall completely to the ground. Additionally, he felt that his leg may have been broken. Subject 1 asked an officer to help him get up, but the officer responded no. Subject 1 said he called 911 while right there on the floor. Subject 1 felt as if the officer had a personal vendetta against him. To Subject 1, it seemed like the officer was just there to "fuck him up" and he wasn't there for the other guys, just him¹⁰ Although he indicated that two uniformed officers were on scene, Subject 1 stated that only one officer physically touched him.¹¹ Subject 1 described the officer who touched him as male, Caucasian, muscular, taller than 5'9" with short dark hair, a mustache, beard, and no glasses.

Subject 1 proceeded to use his umbrella as a crutch as he walked out of the Fast Food Restaurant. Once outside, the officers left and he waited on his own for the ambulance. An ambulance took Subject 1 to Northwestern Memorial Hospital where a sergeant, identified by COPA as Sergeant A¹², stayed with him. Per Subject 1, the 911 dispatcher informed him that a sergeant would be coming.¹³ Subject 1 recalled being asked what happened by Sergeant A at the hospital, but he did not recall what medical procedures were completed at the hospital; however,

⁸ See Attachment 49.

⁹ IPRA interviewed Subject 1 at approximately 1:15 p.m., in the XXth District's lock-up located at XXXX N. Larrabee St. (See Attachment 51).

¹⁰ Subject 1 stated at the onset of his statement that he didn't see what happened to the other guys as he had been asleep. (See Attachment 51).

¹¹ COPA notes that Officer A's BWC footage appears to show Officer B also physically touching Subject 1. However, likewise to Officer A, COPA did not make an allegation of excessive force against Officer B.

¹² See Attachments 4 and 55.

¹³ In his statement to COPA, Subject 1 only speaks to interacting with Sergeant A at the hospital. However, in BWC footage from Sergeant A on the incident date he is seen speaking to Subject 1 in an ambulance situated in front of the Fast Food Restaurant. (See Attachment 55).

he stated that they told him he had a broken big toe.¹⁴ During the statement, an IPRA investigator noted that Subject 1 was wearing a hard cast on his foot.¹⁵ While at the hospital, after speaking with Sergeant A, two different officers handcuffed Subject 1 and told him he had a warrant for his arrest.

When asked if he knew who the other three people in the Fast Food Restaurant were, Subject 1 replied that he knew them in the sense that he sees them here and there. Subject 1 denied having prior issues with his foot. He further denied being under the influence at the time of the incident stating he was completely sober.

By the end of the statement, Subject 1 was not verbally responding to questions posed by the IPRA investigators, i.e., he took long pauses before answering questions and required prompting.

ii. Accused Officer A¹⁶

COPA interviewed accused Officer A on February 2, 2018. When directly asked the allegations, Officer A admitted to all three.

During Officer A's interview, COPA showed him his BWC footage after first asking him to recount the incident in his own words. The following summary is composed based on that structure. At the onset, Officer A answered that he had not reviewed the footage in preparation for the interview.

Officer A stated that he received a call for service from the Fast Food Restaurant via OEMC. Upon arrival, he asked a female employee who she wanted to leave the location. The female employee directed him to two [unidentified] young African-American males sitting down and Subject 1 who was situated in the back corner. He first approached the two African-American males and asked them to leave. He then walked to Subject 1 who he described as "completely passed out" and "completely asleep," and along with Officer B attempted to wake him up.

As Subject 1 woke up, Officer A described him as "frightened [and] startled." Subject 1 stepped up and swung his arms, at which time one of his arms struck Officer A's face causing his nose to bleed. Finally, the officers gained control of Subject 1's arms. He did not remember verbatim what was stated, but Officer A recalled instructing Subject 1 to calm down. After Subject 1 calmed down, both officers informed him he had to leave. Eventually Subject 1 made his way outside. Outside, near the end of their encounter, Subject 1 requested to go to the hospital, which was the only medical attention related request that Subject 1 made to him. In response, Officer A

¹⁴ Subject 1 further mentioned that hospital personnel made comments about his knee, but stated that he did not recall the word they used. (*See* Attachment 51).

¹⁵ Subject 1's medical records detail that he received a post mold to his right foot and provided crutches. (*See* Attachment 40).

¹⁶ Officer A indicated that Beat XXXXX not XXXXX is his normal beat of assignment. He affirmed that to his knowledge he had not interacted with Subject 1 or the other two young African-American males prior to the incident date. (*See* Attachment 54 and 57).

told him the hospital was a block away.¹⁷ He elaborated that Subject 1 did not look as if he had an injury and he believed that Subject 1 was looking for a warming shelter/center. Additionally, he stated that Subject 1 was walking on his own and he didn't believe that Subject 1 ever said what was wrong with him.

When asked what he, as an officer, is required to do when a member of the public asks for medical assistance, he responded "call EMS." Asked whether he perceived Subject 1's request to go to the hospital as a request for medical assistance, Officer A responded that in his experience in the XXth District, requests for ambulances or to go to the hospital are common with those who are homeless. Overall, he explained that he didn't call for EMS because it was morning time, Subject 1 didn't appear to be hurt at all, he was walking in the Fast Food Restaurant, he walked outside and away from the Fast Food Restaurant before returning to ask for the ambulance, and the hospital was one block away. Officer A stated that he took or understood the preceding to mean Subject 1 was not hurt and he did not need an ambulance. Afterwards, Officer A left the scene to do paperwork and Subject 1 remained standing outside.

Regarding the two African-American males in the Fast Food Restaurant, Officer A stated that after the scuffle with Subject 1, and after he walked outside, they would not leave the area. As a result, he verbally asked them to leave again. He described them as "refusing to leave in a way." He further characterized the two young males as pretty angry, but that they did leave.

After Officer A reviewed his BWC footage¹⁸ from the incident, he provided the additional following information. Officer A confirmed that he "put hands" on the two African-American males when, per him, they became aggressive. Thus, he felt being more aggressive and verbal was what was needed. Officer A stated that inside the Fast Food Restaurant the African-American male, described as not wearing a bandana, put his arm on his chest and pushed back against him. Officer A then pushed him back. Officer A described his push against said male, as seen in Officer A's BWC footage, as being an action to make him walk forward towards the revolving door.

Officer A further stated that the second African-American male, wearing the bandana, held the revolving door as he walked through it. He described the male holding the door in such a manner that he couldn't get past the doors. He stated that he told them "to take a walk," because they looked as if they were going to hang in the area. When asking someone to leave an area, Officer A explained that he ensures that they in fact leave, either by telling them again or by standing there until they have walked away. When asked whether he pushed one or both of the African-American males, he answered that he only shoved or pushed one. Additionally, when asked if he specifically told the two African-American males that they could not hang out outside the Fast Food Restaurant, he responded that he did not. After telling the two black males "to take a walk," he confirmed that they complied.¹⁹

¹⁷ From the Fast Food Restaurant located at XXX N. St. Clair St. to Northwestern Memorial Hospital, it is 0.2 miles or a four-minute walk according to Google Maps. (See Attachment 56).

¹⁸ See Attachment 45.

¹⁹ See Attachment 54 and 57.

b. Digital Evidence²⁰**i. Accused Officer A's BWC Footage²¹**

At approximately 5:34 a.m., Officers A and B arrived at the Fast Food Restaurant location and were directed by Fast Food Restaurant employees to the people they had called 911 regarding. Officer A is first seen walking up to two unidentified African-American males who appeared to be sleeping in chairs. One male wore a grey sweater, blue jacket and a hat. The other male was wearing a black hoodie, red shirt and had a bandana around his neck. He instructed them to wake up and asked them repeatedly to leave.

Officer A then walked over to Subject 1, who was alone and appeared asleep in a chair. Officer B is seen touching Subject 1's shoulder and hood as he told Subject 1 to wake up. After no response from Subject 1, a physical interaction among Subject 1 and Officers A and B ensued, during which time Officer A asked Subject 1 to relax, as well as to stop fighting. Officer A further told Subject 1 several times that it was time to go, to which Subject 1 responded okay.

Meanwhile, the two African-American males are still sitting at the table. Officer A again instructed them to leave, at which point they stood up and walked towards the door with him. While walking to the door, the African-American male in the blue jacket and hat stopped and turned around about halfway, at which point his body, appearing to be his elbow, contacted Officer A's body camera causing the screen to briefly go black. When the image returned, Officer A's left hand was visible on the African-American male's back as Officer A directed him towards revolving doors. In response, the African-American male, now at the revolving doors, turned around and stated, "why you [*unclear*], I have nothing to do with that shit."

When Officer A turned back around to face the interior of the store, Subject 1 is observed hunched over a table with Officer B standing nearby, and the second African-American male, outfitted in a black hoodie, red shirt and bandana around his neck, walked around Subject 1 and towards the exit and walked out. As the African-American male walked through the revolving door, Officer A directed him outside by manually pushing the revolving door in a clockwise direction. Next, Officer A used his hands to push the revolving doors as he entered them to exit the Fast Food Restaurant. Both African-American males appeared clear of the revolving door when Officer A pushed the door with his hands. When Officer A exited the building, both African-American males were standing outside the Fast Food Restaurant adjacent to the revolving door.

Now outside the Fast Food Restaurant, Officer A pushed, with his left hand, the African-American male wearing a grey sweater, blue jacket and a hat. Also, it appeared that Officer A placed his right hand in some manner on the African-American male wearing a black hoodie, red

²⁰ COPA reviewed the in-car camera ("ICC") for Officer A and B's Beat XXXXX; however, the footage, timestamped 5:44 a.m., did not show anything pertinent. (See Attachment 45).

²¹ Officer B did not have a BWC on the incident date. (See Attachments 45 and 48).

shirt and bandana around his neck. Subsequently, the latter African-American male turned around and stated to Officer A, “what the fuck is you doing boy.” In response, almost immediately, Officer A put his hands on the African-American male’s chest and pushed him. Officer A stated to them, “fucking walk, take a fucking walk.” Both African-American males proceed to walk away. Officer A then turned back around in the direction of Fast Food Restaurant; contemporaneously Officer B exited the Fast Food Restaurant.

Subsequently, Officer A re-entered the Fast Food Restaurant where Subject 1 was on his cell phone, standing by a counter near the revolving doors, touching a chair. Officer A told Subject 1 he had to leave. Subject 1 responded that he needed an ambulance to which Officer A replied that he did not. Subject 1 reiterated his need for an ambulance and indicated that he was on the phone with them right now.^{22 23} Officers A and B then walked to their police car. Subject 1 remained standing outside talking on his phone.²⁴

Once inside their car, Officer A stated [*either he or we*] was just fine thirty seconds ago, as well as, commented on Subject 1’s location, and that Subject 1 was walking. The BWC footage concluded with Officer A requesting the event number and being told from the OEMC dispatcher that Subject 1 asked for a supervisor.²⁵

c. Documentary Evidence²⁶

i. Original Case Incident Report, RD #XXXXXXXX

In summary, the report indicated that while responding to a call of four people loitering in the lobby area of Fast Food Restaurant, Officer B approached a sleeping subject, identified as Subject 1, announced his office and instructed him to leave. After efforts by Officer B to wake Subject 1 up failed, Officer A approached Subject 1 and shook his right shoulder in an additional attempt to wake him up. Subsequently, Subject 1 woke up and, as described by Officer A, rose up from his seat swinging his arms in a violent manner and struck Officer A in the face causing his

²² Subject 1’s exact language is not fully decipherable. (See Attachment 45).

²³ From COPA’s investigation, Subject 1 is on the phone with 911. Portions of his conversation is heard in Officer A’s BWC footage. COPA requested Subject 1’s 911 call; however, OEMC responded that the retention period had passed. (See Attachments 39 and 59).

²⁴ In the BWC footage, an umbrella is seen under the table where Subject 1 had been seated. Later, Officer B is seen holding what appears to be the same umbrella. Once Subject 1 and both officers are outside, the umbrella is again seen positioned adjacent a Fast Food Restaurant monogrammed gate-like apparatus with Officer B instructing Subject 1 to pick it up. In the entirety of the footage, Subject 1 is never shown with an umbrella in his hand after he is woken up. It is noted that the officers left the scene before the ambulance arrived. (See Attachment 45).

²⁵ See Attachment 45.

²⁶ Additional CPD reports completed relative to this incident include: (1) a Supplementary Report completed by Sergeant A detailing interviews he conducted with Fast Food Restaurant employees Civilian 1 and Civilian 2; (2) a Tactical Response Report (“TRR”) completed by Officer A characterizing Subject 1 as a passive resister in that he did not follow verbal directions and Officer A’s documenting of his response as “member presence” and “verbal commands”; (3) an Officer’s Battery Report completed by Officer A; (4) a TRR completed by Officer B; and (5) an Injury on Duty Report documenting injury to Officer A completed by Sergeant A. See Attachments 19-23.

nose to bleed. Officers A and B grabbed Subject 1 by the arms and neck to gain control of Subject 1. Afterwards, Officers A and B directed Subject 1 outside the Fast Food Restaurant.²⁷

ii. Subject 1's Arrest Report²⁸

Subject 1's final arrest report narrative indicated that Officers A and B responded to a call to remove four males loitering in a Fast Food Restaurant's lobby. One subject [Subject 1] became aggressive when he was woken up, and swung his arms at the officers resulting in Officer A being struck in the face causing a bloody nose. It stated that Subject 1 requested a supervisor, as well as that he was transported to Northwestern Memorial Hospital for medical treatment. The narrative detailed that "per Doctor 1 treatment revealed [a] broken toe, unknown time and circumstances of injury occurrence." CPD relocated Subject 1 to the XXth District and Beat XXXXX processed Subject 1. Officer B attested to Subject 1's arrest report and Officer A was listed as an arresting officer.

iii. Subject 1's Medical Report

Medical records indicated that Subject 1 arrived at the Northwestern Memorial Emergency Department in police custody with right foot and knee pain following an altercation with a CPD officer. Subject 1 was characterized as drowsy and arousable to pain. Subject 1 was noted as falling asleep mid-conversation. Subject 1's physician, Doctor 1, ordered x-rays on Subject 1's knee and foot, and ultimately diagnosed him with an avulsion fracture. Specifically, she notated "acute avulsion fracture at the lateral aspect of the first tarsometatarsal joint with overlying soft tissue swelling."²⁹

VI. ANALYSIS

Allegation #1

The then controlling General Order G04-01, entitled "Preliminary Investigations," dictates that one of the procedures to follow upon arrival to an assignment as a preliminary investigator is to "render aid to the injured."³⁰

In Officer A's interview to COPA, he affirmed that he did not seek medical attention for Subject 1 because of the following reasons: (1) he did not perceive Subject 1 to be injured, (2) he did not believe Subject 1 told him an exact injury, (3) Subject 1 walked on his own accord, (4) they were a block from the hospital, (5) it was morning time, and (6) his experience working in the XXth District with those who are homeless. Additionally, the BWC footage revealed that: (1) Subject 1 walked without apparent, significant difficulty and not with an umbrella as he alleged;

²⁷ See Attachment 12; See also Attachment 14, RD #XXXXXXXX (documenting "non-criminal accidental injuries" received by Subject 1 and Officer A detailing that Subject 1 struck Officer A in the nose causing bleeding and listing right foot pain for Subject 1, in addition to affirming the events of their interaction in the Fast Food Restaurant).

²⁸ While Subject 1 was not initially arrested by Officer A at the Fast Food Restaurant, Officer A's subsequent complaint as a victim of a battery provided a sufficient bases for the arrest.

²⁹ See Attachment 40.

³⁰ See Attachment 49.

(2) Subject 1 was on a cell phone, but it was not clear to whom Subject 1 was speaking to; (3) Subject 1 did not directly state an injury to Officer A; and (4) Officer A provided Subject 1 with directions to the hospital, which was approximately 0.2 miles away from the Fast Food Restaurant.

In considering the totality of the evidence, COPA finds Officer A credible in his statements that he did not perceive Subject 1 to be injured based upon Subject 1 walking on his own accord, and that he didn't believe Subject 1 told him an exact injury. Likewise, Officer A's perception of the event was clearly supported by BWC evidence. Nonetheless, BWC footage did show Subject 1 clearly requesting an ambulance for unknown reasons. However, Officer A's understanding of Subject 1 request was that of a homeless person requesting transport to a hospital/shelter. Officer A explained that his interpretation of Subject 1's request was predicated on his past experiences with the homeless population in the XXth District where it was common for a homeless individual to request an ambulance to take them to a hospital/shelter not for purposes of an injury, but just for a ride there. In the instant case, COPA finds Officer A's actions sufficiently proper in view of the facts in front of him at the time, and therefore, recommends a finding of **EXONERATED**.

Allegation #2

In his interview to COPA, Officer A admitted to pushing one of the unidentified African-American males outside the Fast Food Restaurant as seen in his BWC footage. Additionally, his BWC footage clearly showed him pushing both males, despite his statement that he only pushed or shoved one of the two males.

While Officer A characterizes the two males as becoming aggressive, and for that reason he felt that him becoming aggressive and verbal is what was needed. Based on a review of Officer A's BWC footage, COPA does not agree with Officer A's characterization. Viewing the footage in the most objective light, it shows at best that the male without the bandana and Officer A bumped into each other when the male turned around to speak to his friend. Additionally, around the time that Officer A pushed the two African-American males, the two had exhibited compliance with Officer A's instruction to leave the Fast Food Restaurant. When considering their compliance and lack of aggression towards Officer A it becomes clear that Officer A decision to use force by pushing the two males was neither proper nor necessary; therefore, COPA recommends a finding of **SUSTAINED** for the allegation that Officer A pushed two unidentified males outside the Fast Food Restaurant, in violation of Rule 8 and 9.

Allegation #3

It is irrefutable from Officer A's BWC footage that he directed profanity at two unidentified males while escorting them outside the Fast Food Restaurant. Coupling the BWC footage with Officer A's admittance during his interview with COPA, COPA recommends a finding of **SUSTAINED**.

Additional Analysis

In reviewing the BWC footage and considering Subject 1 and Officer A’s statements, the physical interaction between Subject 1 and the officers did not constitute excessive force. The BWC footage depicts Subject 1 reacting in a physical manner to being startled from being awakened. Subject 1 himself stated that he had been in a deep sleep. Neither officer is observed slamming or throwing Subject 1 to the ground, rather their actions are best described as an attempt to calm or contain Subject 1 after he energetically awakens. In fact, Officer A is heard repeatedly instructing him to relax, as well as to stop fighting. In all, Officers A and B’ applied force to Subject 1 did not violate CPD use force policies.³¹

VII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding
Officer A	1. Failed to seek medical attention for Subject 1 despite his verbal request, in violation of Rule 5	Exonerated
	2. Pushed two unidentified males outside the Fast Food Restaurant, in violation of Rule 8	Sustained
	3. Directed profanity at the same unidentified two males, in violation of Rule 8	Sustained

Approved:

Deputy Chief Administrator – Chief Investigator

 Date

³¹ See Attachments 50 and 58.

Appendix A

Assigned Investigative Staff

Squad#:	XX
Investigator:	Investigator A, #XX
Supervising Investigator:	Supervising Investigator A, #XX
Deputy Chief Administrator:	Deputy Chief Administrator A